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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

8 ISAAC LEE ZAMORA,

9 Plaintiff,

10 v.

11 JACK WARNER,

12 Defendant.

Case No. C17-1007-RSL-JPD

REPORT AND RECOMMENDATION

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14 This is a civil rights action brought under 42 U.S.C. § 1983. This matter comes before
15 the Court at the present time on what plaintiff has identified as a motion for summary judgment.
16 (*See* Dkts. 17, 18 and 19.) However, because plaintiff's motion is based on his alleged failure to
17 receive a timely response to his complaint, his motion is more properly construed as a motion for
18 entry of default and/or for default judgment under Fed. R. Civ. P. 55, rather than as a motion for
19 summary judgment under Fed. R. Civ. P. 56.

20 Plaintiff asserts in his motion papers that he is entitled to judgment in this matter because
21 he did not receive an answer to his complaint within 60 days of August 17, 2017 as specified in
22 the waiver of service of summons filed by defendant on September 14, 2017. (*See* Dkts. 15 and
23 19.) Defendant responds that he did, in fact, file a timely answer to plaintiff's complaint on

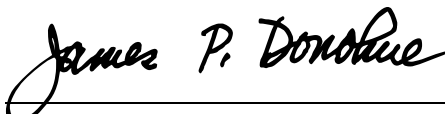
REPORT AND RECOMMENDATION - 1

1 October 16, 2017, and the record confirms that fact. (*See* Dkts. 16 and 20.) Accordingly,
2 plaintiff's motion for entry of judgment in his favor based on defendant's alleged failure to file a
3 timely response to plaintiff's complaint must be denied. A proposed order accompanies this
4 Report and Recommendation.

5 Objections to this Report and Recommendation, if any, should be filed with the Clerk and
6 served upon all parties to this suit by no later than **November 22, 2017**. Failure to file objections
7 within the specified time may affect your right to appeal. Objections should be noted for
8 consideration on the District Judge's motion calendar for the third Friday after they are filed.
9 Responses to objections may be filed within **fourteen (14)** days after service of objections. If no
10 timely objections are filed, the matter will be ready for consideration by the District Judge on
11 **November 24, 2017**.

12 This Report and Recommendation is not an appealable order. Thus, a notice of appeal
13 seeking review in the Court of Appeals for the Ninth Circuit should not be filed until the
14 assigned District Judge acts on this Report and Recommendation.

15 DATED this 1st day of November, 2017.

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18 JAMES P. DONOHUE
Chief United States Magistrate Judge